



## WISCONSIN SUPREME COURT CALENDAR

May 2, 2002

10:45 a.m.

00-3134-CR State v. John Tomlinson Jr.

*This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed a judgment of the Milwaukee County Circuit Court, Judge Jeffrey A. Wagner presiding.*

In this case, the Wisconsin Supreme Court will decide whether a minor has the authority to admit police (who do not have a warrant) into a home to conduct a search.

Here is the background: At approximately midnight on Feb. 5, 1999, Otis Coleman and Lewis Phillips were walking near the 1100 block of West Chambers Street in Milwaukee. They approached a group consisting of John Tomlinson Jr., Tomlinson's wife, and a third person. Phillips asked Mrs. Tomlinson for a cigarette and offered to pay a quarter for it. Mrs. Tomlinson responded by asking for fifty cents and Phillips said, "a quarter, bitch." Tomlinson then confronted Phillips for calling his wife a name, walked away, and returned with a baseball bat. Tomlinson used the bat to hit Phillips in the knee and the head. Angela Green, who was out walking, then saw Tomlinson leaving the scene with his teenage daughters, who were carrying broom and mop handles. Green then came upon Phillips, who was on the pavement and bleeding. A neighbor called 911.

Phillips died several days later from brain injuries due to blunt force trauma. The medical examiner said that his skull had been fractured.

Several weeks later, police investigating the homicide spoke with Green. She described the Tomlinsons and the events she had witnessed. She identified Tomlinson from a photo array and told the detectives that he lived with his wife and two teenage daughters and provided the address.

The detectives went to the Tomlinson residence, knocked on the back door, identified themselves to the teenage girl who answered the door, and asked if they could come in to look for John Tomlinson. The girl opened the door and allowed the officers to enter. Tomlinson was standing nearby and did not object. They then arrested Tomlinson, his wife, and his two daughters in connection with the homicide. The wife and daughters asked to put on their socks and shoes and the officers followed them into the bedroom for safety reasons. There, they spotted a baseball bat and some broom/mop handles, which they seized as evidence.

Tomlinson was charged with being a party to the crime of first-degree reckless homicide while using a dangerous weapon. He pleaded not guilty and filed a motion seeking to suppress the evidence seized from his home. The trial court found that the entry was properly consented to, and denied the motion to suppress. Tomlinson was eventually found guilty.

He appealed the conviction, and the Court of Appeals affirmed, rejecting the argument that the teenager did not have the authority to allow the officers to enter the

home. The Court of Appeals noted that federal case law<sup>1</sup> has established the third-party consent doctrine, which says that a third party may OK a search of a residence if the third party has common authority over the premises to be searched. Given that the witness had told the officers that Tomlinson had two teenage daughters, the Court of Appeals found that the officers reasonably concluded that the girl answering the door was one of his daughters. As a resident of the home, she would meet the definition of a third party who could lawfully consent to a search. The Court of Appeals also emphasized that Tomlinson himself was standing right there and did not object.

The Supreme Court will now decide whether the lower courts were correct in concluding that a teenager may authorize a police entry into a home.

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<sup>1</sup> United States v. Matlock, 415 U.S. 164, 171 (1974)